IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JACQUELINE ROWLAND, Administratrix of the Estate of Robert Rowland (a/k/a Roberto Rolland; a/k/a James Moody),	:	CIVIL ACTION
Plaintiff,	:	
v.	:	No. 97-2143
CITY OF PHILADELPHIA, et al.,	:	
Defendants.	:	

MEMORANDUM

R.F. KELLY, J. OCTOBER 28, 1997

Before this Court is Defendants' Motion for Summary Judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. This action was brought by Plaintiff as Administratrix of the estate of her son, Robert Rowland, asserting claims based on a state-created danger, Eighth Amendment violations, failure to supervise and train, and state wrongful death and survival actions. For the reasons that follow, Defendants' Motion is granted.

I. Background

On December 6, 1993, Defendant Edward Pinsky, Personnel Officer with the Philadelphia Prisons, issued a memorandum stating that a correctional officer trainee must always be under the guidance of a full-performance officer. Approximately two months later, Defendant Thomas Costello, the Acting Commissioner

of Prisons, issued another memo restating and further explaining this instruction. The memo explained that "[t]his does not mean close, constant contact for the entire tour of duty." Plaintiff's Ex. A. Further, Costello's memo stated that trainees should not be assigned to a one-officer post, but could be left alone for specific periods.

Robert Rowland was incarcerated in the Philadelphia House of Corrections (HOC). On March 30, 1995 Rowland was lifting weights in the HOC gymnasium during an inmate basketball game. During the game, Rowland taunted another inmate, James Catlett, who was playing basketball and whose team was losing. After the game, Rowland approached Catlett. Catlett punched Rowland, who fell backward and struck his head on the gymnasium's concrete floor. Rowland's injuries ultimately proved fatal. Catlett was tried and convicted of second degree manslaughter.

One correctional officer trainee was on duty in the gym on the morning Rowland was fatally injured. The trainee, Xavier Beaufort, did not witness the physical altercation between Rowland and Catlett because he had been called to the gate by another officer. When Beaufort returned to the gymnasium area and discovered Rowland lying on the floor, he summoned a response team which arrived shortly thereafter.

II. Standard

Summary judgment is proper if "there is no genuine

issue as to any material fact and the moving party is entitled to a judgment as a matter of law." FED. R. CIV. P. 56(c). The moving party has the burden of informing the court of the basis for its motion and identifying those portions of the record that demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). The non-moving party cannot rest on the pleading, but must go beyond the pleadings and "set forth specific facts showing that there is a genuine issue for trial." FED. R. CIV. P. 56(e); Celotex, 477 U.S. at 324. If the court, in viewing all reasonable inferences in favor of the non-moving party, determines that there is no genuine issue of material fact, then summary judgment is proper. Celotex, 477 U.S. at 322; Wisniewski v. Johns-Manville Corp., 812 F.2d 81, 83 (3d Cir. 1987).

III. Discussion

State-Created Danger

The Plaintiff claims that the assignment of a trainee to the gymnasium gives rise to a claim under the state-created danger theory. The Third Circuit recently held that the state-created danger theory is a viable mechanism for establishing a constitutional violation under 42 U.S.C. § 1983 ("Section 1983"). See Kneipp v. Tedder, 95 F.3d 1199 (3d Cir. 1996). In Kneipp, the court applied a four-element test for state-created danger cases:

> (1) the harm ultimately caused was foreseeable and fairly direct; (2) the state actor acted in willful disregard for the safety of the plaintiff; (3) there existed some relationship between the state and the plaintiff; (4) the state actors used their authority to create an opportunity that otherwise would not have existed for the third party's crime to occur.

Id. at 1208 (quoting Mark v. Borough of Hatboro, 51 F.3d 1137, 1152 (3d Cir. 1995)). In Kneipp, a police officer, after stopping an intoxicated couple, left the woman alone to walk home on a cold night. The woman eventually fell and suffered injuries resulting from the fall and the cold. The Third Circuit found that the state-created danger theory was a viable mechanism for establishing a constitutional claim under Section 1983. Kneipp, 95 F.3d at 1211.

Applying the elements to the facts of this case, Plaintiff is unable to establish a Section 1983 claim under the state-created danger theory. Plaintiff contends that the assignment of a trainee created a danger, but there is no evidence that the harm ultimately caused to Rowland was foreseeable, particularly when the trainee was assigned to the gymnasium. There is no evidence of any altercation between Rowland and Catlett prior to the basketball game.

In order to support a claim, the action must leave a discrete plaintiff vulnerable to foreseeable injury. Mark, 51 F.3d at 1153. Unlike Kneipp, where the plaintiff was left alone and clearly susceptible to the injury that occurred, the mere

assignment of Beaufort to the gym did not leave Rowland vulnerable to any foreseeable injury. Further, there is no evidence to establish that the assignment of Beaufort was done with willful disregard to Rowland's safety. Assuming that there was a special relationship between the state and Rowland, there is no evidence indicating that the Defendants used their authority to create the opportunity for Catlett to kill Rowland. The mere assignment of a trainee did not make Rowland more vulnerable to this injury. There is no evidence of specific knowledge by the Defendants of Rowland's susceptibility to this injury. Therefore, summary judgment must be entered for Defendants on this claim.

Eighth Amendment

The treatment a prisoner receives in prison and the conditions under which he is confined are subject to scrutiny under the Eighth Amendment's prohibition of cruel and unusual punishments. Helling v. McKinney, 509 U.S. 25, 31 (1993). Prison officials have a duty to protect prisoners from violence at the hands of other inmates. Farmer v. Brennan, 511 U.S. 825, 833 (1994). But not every injury suffered by one prisoner at the hands of another leads to constitutional liability for prison officials. In order for prison officials' conduct to violate the Eighth Amendment, the deprivation alleged must be sufficiently serious, and prison officials must have a sufficiently culpable

state of mind. Id. at 834; Hamilton v. Leavy, 117 F.3d 742, 746 (3d Cir. 1997). To be sufficiently culpable, the state of mind must be one of "'deliberate indifference' to inmate health or safety." Farmer, 511 U.S. at 834. "Deliberate indifference" is a subjective standard; the official must know of and disregard an excessive risk to inmate health or safety. Id. at 837.

Applying this subjective standard, there is no evidence to support the allegation that Defendants acted with deliberate indifference. Beaufort, although a trainee, had completed intervention training. He also possessed a radio with which to contact other corrections officers if needed. There are no facts establishing that Rowland was in particular danger of an attack from another inmate. Further, Plaintiff offers no evidence to support the allegation that Defendants were subjectively aware of a risk to the inmates or Rowland in particular. Thus, there is no evidence that in assigning Beaufort to the gym Defendants knew of and disregarded an excessive risk to inmate health or safety. Therefore, Plaintiff's Eighth Amendment claim is meritless.

Failure to Train and Supervise

Counts III and IV of Plaintiff's complaint are against all individual Defendants and the City, respectively, based upon their alleged failure to supervise, train, and instruct officers in Philadelphia's prison system. In Count IV, Plaintiff alleges that the City's failure to instruct and train violated Rowland's

Fourth Amendment right to be secure in his person and to be free from unreasonable seizure, and his Fourteenth Amendment right to equal protection. A municipality can be liable under Section 1983 only where official policy is the moving force behind the constitutional violation. Monell v. Dep't of Soc. Servs., 436 U.S. 658, 694 (1978). A Section 1983 claim can be based upon inadequacy of training only where the failure to train amounts to deliberate indifference to the rights of persons with whom the officers come in contact. City of Canton v. Harris, 489 U.S. 378, 388 (1989). There must be a causal nexus between the deficiency in training and the plaintiff's injuries. Reitz v. County of Bucks, No. 96-1934, 1997 WL 547942, at *6 (3d Cir. Sept. 8, 1997); Kneipp, 95 F.3d at 1212.

Plaintiff contends that the memos from Defendants Pinsky and Costello created a policy of ensuring that trainees were always under the guidance of a full-performance level correctional officer, and a policy of not assigning trainees to one-officer posts. There is insufficient evidence to indicate that these memos constituted a policy of the Defendant City.

Even assuming that this was the City's policy, Plaintiff offers no evidence to establish that the assignment of Beaufort to the gymnasium without constant contact with another officer amounts to deliberate indifference on the part of the Defendants. There is also no evidence that the City acted with

deliberate indifference in its training of Beaufort, particularly in light of the fact that, although a trainee, he had received training in intervention. Further, the causal nexus between the Defendant's actions and Rowland's death is far too attenuated to permit recovery. See Best v. Essex County, 986 F.2d 54, 57 (3d Cir. 1993) (finding that the connection between prison overcrowding and an inmate's assault was too weak to permit recovery).

In order to establish municipal liability under Section 1983, Plaintiff must show that one or more of the individual Defendants violated Rowland's constitutional rights. Where there is no constitutional violation by a municipal employee, there can be no liability on the part of the municipality. City of Los Angeles v. Heller, 475 U.S. 796, 799 (1986).

In order to hold a supervisory official liable under Section 1983 for failure to train or supervise, the plaintiff must: (1) identify with particularity what the supervisory official failed to do that demonstrates his deliberate indifference, and (2) demonstrate a close causal relationship between the identified deficiency and the ultimate injury. Kis v. County of Schuylkill, 866 F. Supp. 1462, 1474 (E.D. Pa. 1994). Plaintiff has not met these requirements. There is no evidence of deliberate indifference on the part of any of the individual Defendants. The causal relationship between any of the

Defendant's actions and Rowland's death is tenuous. Therefore, summary judgment must be entered for Defendants for these claims.

Qualified Immunity

Defendants argue that they are entitled to qualified immunity for their actions. Qualified immunity shields government officials performing discretionary functions from civil damages liability as long as their actions could reasonably have been thought consistent with the rights they are alleged to have violated. Anderson v. Creighton, 483 U.S. 635, 638 (1987). The Supreme Court has held that an official is entitled to qualified immunity unless he knew or reasonably should have known that the action he took within his sphere of official responsibilities would violate the plaintiff's constitutional rights. Harlow v. Fitzgerald, 457 U.S. 800, 815 (1982).

Even proceeding under the assumption that Rowland's constitutional rights were violated, Plaintiff cannot prevail. Plaintiff offers no evidence that Defendants knew or reasonably should have known that the assignment of a trainee and the failure to accompany him at all times would violate Rowland's constitutional rights. Therefore, Defendants are entitled to qualified immunity.

Pendent State Claims

In Pennsylvania, state law claims brought against municipal entities are subject to the limitations imposed by the

Political Subdivision Tort Claims Act ("PSTCA"), 42 Pa. C.S. § 8541 et seq. The PSTCA provides, in pertinent part: "Except as otherwise provided in this subchapter, no local agency shall be liable for any damages on account of any injury to a person or property caused by any act of the local agency or an employee thereof or any other person." 42 Pa. C.S. § 8541. None of the exceptions are relevant in this case. See 42 Pa. C.S. § 8542. Therefore, Plaintiff cannot maintain these state law claims against the City.

Plaintiff argues that the individual Defendants are still subject to liability because the PSTCA removes immunity from individual defendants whose acts constitute "actual malice or willful misconduct." See 42 Pa. C.S. § 8550. Actual malice and willful misconduct are defined as "action taken either with the desire to bring about a particular result or with the awareness that the result which followed was substantially certain to ensue." Herman v. Clearfield County, 836 F. Supp. 1178, 1189 (W.D. Pa. 1993), aff'd, 30 F.3d 1486 (3d Cir. 1994) (citing Evans v. Philadelphia Transp. Co., 212 A.2d 440, 443 (Pa. 1965)). Plaintiff has not offered any supporting evidence that even remotely indicates actual malice or willful misconduct on the part of the individual Defendants. Therefore, Plaintiff cannot maintain state law claims against the individual Defendants.

IV. Conclusion

In summary, Plaintiff has failed to establish the elements necessary for a Section 1983 state-created danger claim. Plaintiff is unable to offer any evidence of deliberate indifference on the part of Defendants as required for an Eighth Amendment claim. Further, Plaintiff can show neither deliberate indifference nor the causal nexus required for the failure to train and supervise claims. Defendants are also entitled to qualified immunity on these claims. Plaintiff's state law wrongful death and survival claims are barred by the PSTCA. Therefore, summary judgment will be entered for the Defendants on all counts.

An appropriate Order follows.

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Defendants.	:	

ORDER

AND NOW, this 28th day of October, 1997, upon consideration of Defendants' Motion for Summary Judgment and all responses thereto, it is hereby ORDERED that said Motion is GRANTED.

BY THE COURT:

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Robert F. Kelly, J.